

**internal revenue  
memorandum**

TL-N-116-99

DABreen

date: FEB 11 1999

to: Charlotte Roe, Chief, Case Processing and Accounts Receivable Section  
Philadelphia Service Center

from: Joseph M. Abele, Assistant District Counsel  
Pennsylvania District

subject: [REDACTED] SSN [REDACTED]

This memorandum is in response to a question posed by Kay Parry. Specifically, the question is whether there is a barred assessment under the facts set forth below.

**Issues**

(1) Is the [REDACTED] return filed for [REDACTED] a valid joint return and, if not, (2) is the Service barred from making additional assessments to this purported joint income tax return.

**Conclusion**

The [REDACTED] return is not a valid *joint* return, but is a valid separate return for [REDACTED]. Due to the fact that the three year statute of limitations on assessment expired on [REDACTED], no additional assessment can be made for this return.

**Facts**

Taxpayer [REDACTED] filed a separate return, Form [REDACTED], for [REDACTED] on [REDACTED]. The balance due with the return, \$[REDACTED] was paid with the return. On [REDACTED] a joint return for [REDACTED] for [REDACTED] was filed. This return showed a balance due of \$[REDACTED]. This balance due was not paid with the return. Rather than rejecting the second return as a duplicate filing, the Service accepted and processed it using joint rates.

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When [REDACTED] filed returns for [REDACTED] and [REDACTED], the Service offset her refunds with the unpaid [REDACTED] joint liability. She contacted the Service and alleged that she only filed one return for [REDACTED]—the separate return in [REDACTED]. Accepting her oral testimony, the technician handling this case transferred all offsets back to [REDACTED]'s [REDACTED] and [REDACTED] accounts. The Service now proposes to convert the purported joint return for [REDACTED] and [REDACTED] to a married filing separate return for [REDACTED]. This change in filing status would generate an additional tax liability for [REDACTED].

The specific questions posed are whether (1) the second return filed in [REDACTED] is a valid joint return and if not, (2) whether an assessment of an additional liability for [REDACTED] is barred by the statute of limitations.

[REDACTED] has not filed a formal claim for refund. Her case is under consideration as a result of her telephonic inquiry.

The signature dates on the joint return for [REDACTED] cause some confusion. Although it was not filed until [REDACTED], the signatures on this return for both [REDACTED] and [REDACTED] are dated [REDACTED]. In all likelihood, this return was prepared in [REDACTED] but never filed. [REDACTED] then filed separately in [REDACTED]. [REDACTED] then filed the joint return in [REDACTED]. The taxpayers are now divorced. An inspection of the two signatures for [REDACTED] does not reveal any apparent irregularity. [REDACTED] does not claim that her signature on the joint return is not authentic.

#### Discussion and Legal Analysis

The initial analysis must be the validity of the two tax returns. Although it appears that the joint tax return for [REDACTED] was prepared and signed prior to the separate return for [REDACTED], her separate return was filed first. Therefore, for [REDACTED], the separate return constitutes her original tax return for [REDACTED]. The filing of this return also starts the running of the three years statute of limitations for [REDACTED]. The statute of limitations for filing a claim for refund or making an additional assessment for her separate return expired on [REDACTED].

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<sup>1</sup> Since the taxpayers were divorced by this time, these returns were filed claiming head of household rates.

The purported joint tax return filed for [REDACTED] on [REDACTED] is not a valid joint return. [REDACTED] has stated that she did not intend to file a joint return with [REDACTED]. Although a signature on a tax return is presumed to be authentic, I.R.C. § 6064, Regs. § 301.6064-1, [REDACTED]'s credible repudiation of this return, coupled with her filing a separate return, casts considerable doubt on its validity. Further, returns filed without the knowledge or consent of a taxpayer are not valid. *P.M.C. Berenbeim v. Commissioner*, T.C. Memo 1992-272, where returns given to a revenue agent and filed by him were not valid returns, because the taxpayer did not intend to file or consent to file a joint return.

There is a more compelling reason for invalidating the joint return filed [REDACTED]. I.R.C. § 6013(b) permits taxpayers to file a joint return after a separate return has been filed if certain conditions are met. I.R.C. § 6013(b)(2)(A) precludes the filing of a joint return "unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return." Because the purported joint return was filed with an unpaid balance due, it is not a valid joint return. *Jenny v. Commissioner*, T.C. Memo 1983-1.

There is nothing in the case file to suggest that [REDACTED] did not intend the return filed [REDACTED] to be his tax return for [REDACTED]. The question then is what filing status he is entitled to. Since he was married to [REDACTED] as of [REDACTED] and the return is not a joint return, the only permissible filing status for this return is married, filing separately. Since the return was processed using joint rates, conversion to married filing separately, would generate an underpayment of tax and trigger an additional assessment. However, since the statute of limitations expired on [REDACTED], an additional assessment can not be made.

If you have any questions concerning this memorandum, please contact Senior Attorney David A. Breen at 215-597-3442.

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